IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Appeal No. 239-DBA of 1997

Date of decision: November 21, 2007

State of Haryana ... Appellant

Versus

Subhash and others ... Respondents

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CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

HON'BLE MR. JUSTICE HARBANS LAL

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Present: Mr. S.S.Randhawa, Addl. Advocate General, Haryana for the appellant.

Mr.Baldev Singh, Senior Advocate with Mr.Arshwinder Singh,Advocate for the respondents.

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HARBANS LAL, J

This appeal is directed against the judgment dated 10.7.1996 rendered by the Court of learned Additional Sessions Judge, Jind, whereby he acquitted all the three accused of the charges under Sections 498-A and 304-B read with Section 34 of I.P.C. by giving benefit of doubt.

Succinctly put, the facts of the prosecution case are that on 1.12.1995, PW Baru Ram son of Ved Pal, father of Rajbala alias Balli (deceased) made statement, Exh. PA before Sube Singh, SI/SHO of Police Station, Garhi, stating therein that " I am a resident of Village Kabarchha and am posted as a teacher in my village school. I have five children i.e.

four daughters and a son. The eldest daughter is Rajbala alias Balli, aged 20/21 years, who was married to Subhash son of Jogi Ram Jat, resident of Village Ujhana in April, 1993; I had given dowry as per my status; whenever Raj Bala visited us after her marriage, she used to tell us that she was being harassed by her husband's elder brother (Jeth) Inder Singh, her husband-Subhash as also Maya, her Jethani and they repeatedly asked her to bring Rs.40,000/- from her parents, failing which she would not be allowed to continue to stay in their house; on 26.5.1995, I went to see my daughter and handed over Rs.15,000/- to her Jeth, Inder Singh in the presence of all the members and requested them not to harass my daughter and assured them that I would pay more money if they so demand; on 18.9.1995 my son-in-law, Subhash in the company of 3-4 persons came to our house at about 3.00 A.M. in the night and informed that Raj Bala was seriously ill and was admitted in Narwana Hospital and went back; I visited Civil Hospital Narwana on the next morning but did not find my daughter admitted there; Thereafter I searched for my daughter in private hospitals but finding no clue about her, returned to Village Ujhana, where I found my daughter Raj Bala's dead body lying on the ground; I suspected that my daughter had been murdered by her Jeth Inder Singh, Jethani- Maya and her husband- Subhash by administering some poisonous substance. The aforesaid SI made his endorsement, Exh. PA/2 and sent the same to the Police Station, where on its basis, formal FIR, Exh. PA/1 was recorded by Ram Kishan, ASI, who also made his endorsement, Ex.PA/3 regarding registration of the case. Sube Singh, SI went to the spot in the company of Baru Ram, complainant and inspected the dead body of Raj Bala as well as the spot. He lifted a plastic tumbler (monocrotophos of 36%) which was

lying near the Hand Pump in the husk of Bajra. The same was converted into a parcel, sealed with his seal 'SS' and taken into possession vide Recovery Memo, Exh. PB. He prepared the inquest report and the rough site-plan showing the place of occurrence and sent the dead body to Civil Hospital, Narwana, for conducting autopsy. On return to the Police Station, he deposited the case property with seals in tact. After completion of investigation, charge sheet was laid in the Court for trial of the accused.

On commitment, the accused were charged under Sections 498-A as also 304-B read with Section 34 of I.P.C, to which they did not plead guilty and claimed trial.

In order to substantiate the allegations, the prosecution examined Baru Ram, PW-1, father of the deceased, PW-2 Kuldip Gupta Draftsman, PW-3, Dharam Vir, PW-4, Yudhbir Singh, PW-5, Yash Pal, brother of Baru Ram, PW-6 Jasbir Singh Constable, PW-7 Dr. Vijay Kumar Satija, PW-8, Ram Kishan ASI, PW-9, Suresh Kumar Constable, PW-10, Sube Singh, SI (Investigator), PW-11, Jagdish Chander, MHC, PW-12, Vajinder Singh Constable and closed its evidence by tendering Exh. PK, report of the Chemical Examiner, and by giving up PW Om Pal being unnecessary and Krishan as having been won over by the accused.

On close of the prosecution evidence, the accused were examined under Section 313, Cr. P. C. They denied all the incriminating circumstances appearing against them in the prosecution evidence. They have come up with a common plea that, in fact, Raj Bala was not mentally fully developed to understand between wrong and right and she committed suicide without any rhyme or reason. They offered to produce defence evidence. After having examined Amar Nath, DW-1, they closed their

defence evidence.

After hearing the learned Public Prosecutor for the State as also the learned defence counsel, the learned trial Court acquitted all the accused of the charges, as noticed at the outset.

We have heard Mr. S.S.Randhawa. learned Additional Advocate General, Haryana, appearing on behalf of the appellant-State as well as Mr. Baldev Singh, Senior Advocate, on behalf of the respondents.

Mr. S.S.Randhawa, learned Additional Advocate General, Haryana, strenuously urged that the learned trial Court has altogether ignored the fact that Raj Bala (since deceased) was quite hale and hearty prior to her mysterious death and there was no previous history of any disease or illness and there is hardly any direct evidence available with the prosecution as to what happened within the four walls of her in-laws before her death. He further puts that the learned trial Court should have applied the provisions of Section 113-A of the Indian Evidence Act, 1872 (for short, 'the Act'). He further canvassed at the bar that when the death of a woman otherwise than in normal circumstances, takes place within 7 years of her marriage, then it is obligatory upon the husband as well as the relatives to explain the circumstances under which she died. He further argued that in the case in hand, the death of the deceased occurred otherwise than under the normal circumstances, and that being so, the learned trial Court ought to have invoked the provisions of the above mentioned Section.

To overcome these submissions, Mr. Baldev Singh, learned Senior Advocate, appearing on behalf of the respondents, maintained that as ruled by the Apex Court in re: **State of U.P.** versus **Jai Prakash,** (2007) 3

Supreme Court Cases (Cri.) 450, generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by the acquittal and if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted as paramount consideration of the Court is to ensure that miscarriage of justice is prevented which may arise not only from acquittal of guilty but also conviction of innocent and Appellate Court while dealing with appeal against acquittal should interfere only when there are compelling or substantial reasons for doing so. He further pressed into service that herein the prosecution case hinges mainly upon the statement of Baru Ram, PW-1, father of the deceased as well as Yash Pal, PW-5, who stand shattered and shaken in their cross-examination and that being so, no interference is warranted in the judgment appealed against.

We have given a thoughtful consideration to the rival contentions.

To substantiate the charge under Section 304-B of IPC, the prosecution has to establish the following circumstances:-

(1) the death of wife should have occurred otherwise than under normal circumstances within 7 years of her marriage;

(2) soon before her death, she should have been subjected to cruelty or harassment by the accused in connection with any demand for dowry, to presume that the accused has committed dowry death.

Baru Ram, PW-1, father of the deceased, under the stress of cross-examination, has deposed that " I have no knowledge whether the accused made any demand of any kind of dowry at the time of betrothal ceremony or at the time of marriage because the marriage was arranged by my father, who had the knowledge of any kind of demand made by the accused. " If these facts were within the knowledge of his father, Ved Pal, he ought to have been cited and examined as a witness. To the utter dismay of the prosecution, he has neither been cited nor examined as a witness. As has surfaced in his further cross-examination, his son accompanied his daughter Raj Bala in her Doli to the house of the accused from where they returned on the following day. In his next breath, he has deposed that my son had not told me that my daughter was taunted by the accused party in respect of inadequate dowry given in the marriage.

Baru Ram has given a clean chit to accused Inder Singh as well as Maya accused, by deposing in his further cross-examination,"that accused Inder Singh and Maya never demanded any money from me from the date of marriage of my daughter with the accused Subhash till her death. " In his further cross-examination, he has stated that " accused Inder and Maya never demanded any money or any other article from me till the death of my daughter." He further lets the cat out of bag by deposing in his further cross-examination that " my daughter did not specifically tell me the demand of any other article by the accused after the marriage except that she had been complaining that accused were not happy with the dowry articles given in the marriage." In his examination-in-chief, he has merely stated that "whenever my daughter visited my village, she had been complaining that Inder, her Jeth, Subhash, her husband and Maya, her Jethani, often used to

taunt her for not bringing sufficient dowry in the marriage." A careful delving into his testimony would reveal that he has not disclosed the date or time on which such taunts were made by the accused to his daughter.

Learned trial Court has relied upon the observations made in re: **Kuldeep Singh** v. **State**, 1992 (1) Recent Criminal Reports 675 wherein taunting remarks were made by parents-in-law regarding insufficient dowry but no further maltreatment was given by them, the parents of the boy were acquitted by the trial Court. In his examination-in-chief, Baru Ram PW has stated that " thereafter I went to Village Ujhana to know the welfare of my daughter where my daughter told me that accused were demanding Rs.40,000/- and in case their demand was not fulfilled, she would be turned out of the house. It is worth pointing out here that the prosecution has not let in even a scintilla of evidence in proof of the fact that the deceased was turned out of her matrimonial home on account of non-fulfilment of this demand. In his cross-examination, he has stated that " I handed over a sum of Rs.15,000/- to accused Inder Singh." It shall appear in his further cross-examination that he did not meet Subhash on that day to inform him that out of Rs.40,000/- demanded by them, he had handed over Rs.15,000/- to accused Inder Singh. It emanates from his above referred cross-examination that the accused Inder or his wife never made any demand either of money or any article. If it was so, where was the fun to hand over the alleged amount of Rs.15,000/- to accused Inder in the absence of Subhash. If Subhash had demanded money, then it should have been given to him only. This witness went on to say that the amount of Rs.15,000/- was arranged by withdrawing Rs.9,000/- from my G.P.Fund and Rs.6,000/- was arranged by my father, Ved Pal. The withdrawal of Rs.9,000/- from G.P.Fund could have

been substantiated only by summoning the record. No reason has been assigned for withholding the same. Ved Pal should have been examined to prove as to how he arranged Rs.6,000/-. It is in his further cross-examination that " my father or myself did not ask Subhash accused not to harass my daughter Raj Bala for want of dowry." If the deceased was being harassed by the accused, Baru Ram, PW1 might have counselled the accused. This witness has stated in categoric terms in his cross-examination that " I never informed the Panchayat of Village Ujhana when the accused demanded Rs.40,000/-. The explanation given by him in his next breath is that " I thought that the Panchayat would not serve any purpose. " It is a matter of common knowledge that when a woman is being subjected to cruelty or harassment by her husband or his relatives, she often complains about it to her parents or brothers, who in turn, make endeavours to implore for the better treatment. If the husband or his relatives persist in their such act, in the natural course the matter is brought to the notice of the Panchayat or the Police. Sometimes, the father or brother of the woman initially approaches the Panchayat of their own Village and take the Sarpanch as well as Members along to the house of the husband and after reaching there, they make entreaties with them. Here in this case, no such endeavour seems to have been made, rather as noted supra, according to Baru Ram, taking of the Panchayat was not to serve any purpose. This explanation is untenable.

In the opening sentence of his cross-examination, Baru Ram has stated that " I had not stated to the Police in my statement, Exh. PA that I would meet the demand of dowry of the accused to my daughter when she visited my house for the first time." He further deposed that " I had stated to the Police in my statement that a sum of Rs.15,000/- was given to accused

Subhash in the month of September, 1993. When he was confronted with his statement, Exh. PA, it was found that the name of month was missing. It is also in his cross-examination that I did not inform any respectable of the Village, i.e. Sarpanch or Panch that my daughter was lying dead in the house of the accused. Queerly enough, he kept mum and did not inform the respectables of the Village about it . It is also in his cross-examination that " I had not seen the plastic tumbler myself but it was located by the Police which was kept at a distance of 15 yards from the dead body of my daughter. "

The testimony of Baru Ram, PW-1 that a sum of Rs.15,000/- was given by him to Subhash in 1993 is not corroborated by any convincing evidence from the record. His brother Yash Pal, PW-5 has stated that " my brother Baru Ram gave Rs.15,000/- to accused Subhash." This piece of evidence is nullified when he stated in his cross-examination that " I did not accompany Baru Ram when he went to village Ujhana to hand over Rs.15,000/- on two different occasions." In his next breath he has stated that " I do not know from where Baru Ram had arranged this amount." He has also stated in his cross-examination that " I had stated to the Police that accused Subhash was demanding Rs.40,000/- from my brother Baru Ram and out of this amount he had paid Rs.15,000/- to Subhash." When he was confronted with his statement, Ex. DA, this fact was not found so recorded therein. Thus, in our opinion, the story regarding demand of Rs.40,000/- put forth by the accused fails to inspire confidence. Further, this witness Yash Pal stated that " I do not know from where I had recorded in my statement, Exh. DA that Baru Ram had handed over Rs.15,000/- to accused Subhash." He further stated that " I had not told the Police that Subhash accused while

making the demand of Rs.40,000/- had told my brother Baru Ram that he would not keep deceased Raj Bala in his house." This witness in his further cross-examination has stated that Raj Bala had told him about the maltreatment given by the accused regarding the inadequate dowry whereas Baru Ram is absolutely silent about the fact that maltreatment was being meted out to her. He has merely stated that " thereafter I went to Village Ujhana to know the welfare of my daughter Raj Bala where my daughter told me that the accused was demanding Rs.40,000/- and in case their demand was not fulfilled, she would be turned out of the house." If the accused were clamouring for Rs.40,000/- and they had been harassing the deceased for not meeting their demand, she would have definitely gone to her parental house at the earliest possible and narrated about this fact. She would have not waited for the arrival of her father to disclose this fact. More so, the accused would have compelled her constantly to fetch this amount but there is no such evidence on the record.

Baru Ram (sic.) has stated in categoric terms that Subhash was accompanied by 3-4 persons when he came to Village Kabarchha on a tractor to inform him about the illness of my daughter Raj Bala and that this information was given by accused Subhash to him and my mother as other family members were fast asleep. * The position which emerges out of this piece of evidence is that admittedly the accused had informed father of the deceased about her illness. Had the accused played some foul play, they out of fear would have not gone to inform Baru Ram, PW-1 or other members of his family. Strangely enough, that on receipt of such information, Baru Ram did not prefer to accompany Subhash. In generality, as and when the father or mother of a girl comes to know about her serious illness, they out

of anxiety rush to the Hospital or the place wherever she is. He has not assigned any reason for not going with Subhash. There are no specific allegations of harassment or torture or beating in the statement of Baru Ram PW.

Yash Pal in his cross-examination has stated that " I did not know whether Subhash accused visited our village and informed Baru Ram about the illness of Raj Bala soon before her death because I was not present in the house and was in the fields." It is apt to be borne in mind that as per Baru Ram's version, Subhash reached his house in the night to inform about the illness of Raj Bala. It being night time, Yash Pal would have not been present in the fields. Curiously enough this witness Yash Pal has stated that " I had no knowledge about the death of Raj Bala but learnt it for the first time when the dead body was brought to our village on 2.12.1995." He claims himself to be the real brother of Baru Ram, PW-1. This is such a relationship that he might have come to know that Raj Bala has expired much before the dead body was brought to the village. It is quite startling that he learnt about her death only when the dead body was brought to their village.

In re: **Jagbir Singh and others** v. **State of Punjab,** 1992 (2) Crimes 746, the testimony of witness that there was a demand of Rs.8,000/- from appellant's side was found vague. Here in this case too, the demand has been found to be vague. In **Jagbir Singh & Others'** case (supra), no reliable evidence about deceased having been subjected to cruelty before her death, was produced nor the prosecution had produced the evidence that the accused had abetted commission of suicide. A Division Bench of this Court in these premises was pleased to hold that the accused cannot be said to

have committed the offence.

The principal ingredient of Section 304-B of I.P.C is that to bring the offence within the ambit of this Section, it is imperative upon the prosecution to demonstrate that the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband and such cruelty or harassment should be for or in connection with the demand of dowry and to such cruelty or harassment the deceased should have been subjected soon before her death.

Adverting to the facts of the current case, it is discernible from the preceding discussion that the above referred ingredients of Section 304-B ibid have not been established by the prosecution.

As ruled in re: **State of Karnataka** v. **M.V. Manjunathegowda and another,** (2003) 2 Supreme Court Cases 188, the presumption under Section 113-B of the Indian Evidence Act, 1872, will operate if prosecution is able to establish circumstances set out in Section 304-B of I.P.C.

In the instant case, the prosecution has failed to establish the circumstances set out in Section 304-B of I.P.C. So, the presumption under Section 113-B ibid will not come into play in this case.

Much stress has been laid by Mr. S.S.Randhawa, learned Additional Advocate General, Haryana, that since death of the deceased occurred otherwise than under the normal circumstances, so the presumption arising under Section 113-A of Indian Evidence Act, 1872 is attracted to the facts of this case. As observed by the Apex Court in re: **Shamnsaheb M. Multtani** v. **State of Karnataka,** (2001) 2 Supreme Court Cases 577, by the introduction of Section 113-A in the Indian Evidence Act, offence under

Section 306 of I.P.C. has acquired wider dimensions and has become a serious marriage related offence. Section 113-A of the Indian Evidence Act, 1872 says that under certain conditions, almost similar to the conditions for dowry death, the Court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the Court may presume the fact, it is discretionary on the part of the Court either to regard such fact as proved or not to do so, which depends upon all other circumstances of the case. Reverting back to the facts of the case in hand, there is no evidence to the effect that any incidence inciting the deceased to commit suicide occurred in the house soon before her death. Consequently, the ingredients of Section 304-B of I.P.C. have not been supplied or fulfilled. So, presumption under Section 113-B ibid cannot be drawn against the accused. On analysing and appreciating the evidence trickled from the respective mouths of Baru Ram and Yash Pal, PWs , it does not transpire that the accused had brought about a situation to such a boil which forced the deceased to take her own life. Sube Singh, SI (Investigator) has stated in his cross examination that there was no external injury on the dead body of Raj Bala. The bangles worn by Raj Bala at the time of her death were in tact.

Dr. Vijay Kumar Satija, PW-7 has also stated that no injury was present any where on the body of the deceased. There being no injury on the body of the deceased, it can be safely inferred that no beating was given to the deceased soon before her death. At the cost of repetition, it deserves to be pointed out here that the record is quite barren to show any incidence either soon before death or much before that. Section 113-A ibid reads in the following terms :-

> " 113-A. **Presumption as to abetment of suicide by a married woman.-**
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> When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. "

As noted (supra), there is nothing on the record to show that any incidence had occurred in the house. Of course, in case of dowry deaths and suicides, circumstantial evidence plays an important role and an inference can be drawn on the basis of such evidence, but in the present case there is no such circumstantial evidence which would lead to establish the offence either under Section 304-B of IPC or under Section 306 of IPC. It is notable here that the precise or near about words of the alleged taunting have also not been disclosed. The proximate and live-link between the effect of cruelty, based on dowry demand and the consequential death, is required to be proved by the prosecution. In his cross examination, Baru Ram, PW-1 has stated that Raj Bala had never attended school during her life time. He has further stated that, however, my other children had attended the school except a daughter whose eye sight had deteriorated and

that my daughter Raj Bala was of dark complexion and she was simple. It bears repetition that the plea of the accused is that Raj Bala was not mentally fully developed to understand between wrong and right and she committed suicide without any rhyme or reason. A suggestion has been put to Baru Ram, PW-1 that he remained present at the house of the accused for one and half hours and demanded return of dowry and compelled them to marry their second daughter with Subhash and on answering in the negative, this false case has been registered against them. There is another suggestion that Raj Bala deceased was not mentally developed and she could not adjust with accused Subhash, on account of which, she committed suicide. There being no episode of giving beatings or of maltreating or harassment to the deceased by the accused, it can be presumed that the deceased being a simpleton, could not adjust herself in the family of the accused and committed suicide.

The above discussion leads to an irresistible conclusion that the judgment under appeal does not suffer from any infirmity or illegality as would require interference in it. Consequently, this appeal fails and is dismissed.

(HARBANS LAL)
JUDGE

(MEHTAB S. GILL)
JUDGE

November 21, 2007
RS

Whether to be referred to the Reporter ? Yes